IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 30 of 2007
With
COMPANY PETITION No. 31 of 2007
To
COMPANY PETITION No. 33 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NORFOLK INFOTECH PRIVATE LIMITED. - Petitioner(s)
Versus
. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Petitioner(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 03/08/2007

ORAL JUDGMENT

1.The present petitions are for sanctioning the

Scheme of Amalgamation. The petitioner of Company Petition No.33 of 2007 is the Transferee Company and the petitioners of Company Petition Nos.30, 31 and 32 of 2007 are the Transferor Companies. The Scheme which is proposed to be sanctioned is produced at Annexure-C in the petitions.

2. In Company Applications Nos.38, 39, and 40 of 2007 were preferred for compliance compliance to the statutory provisions of holding of the requisite meeting for considering the scheme of amalgamation. However, vide order dated 2.2.2007 passed by this Court the meeting of the equity shareholders was dispensed with and there were no security creditors and unsecured creditors in Company Applications No.38 and 39 of 2007. Whereas in case of Company Application No.40 of 2007, the meeting of the equity shareholders and unsecured creditors were dispensed with. It may be recorded that it is on account of the concerned letters produced by the applicant company therein, the Court exercised the power for dispensation of the meeting.

3. Both these petitions came to be admitted on 9.2.2007 and it was ordered to advertise in two daily newspapers, viz. Indian Express (English daily) and Divyabhaskar (Gujarati daily) both Ahmedabad editions and the publication in the

Government gazette was dispensed with. The notice was also ordered to be issued to the Central Government through Regional Director, Department of Company Affairs, Mumbai, and in case of Transferor Company, the notice was also issued to the Official Liquidator for examination through Chartered Accountant into the affairs of the Company.

4.The affidavit is filed by Darmendra M. Rathod, Clerk of the learned advocate Ms.Swati Suparkar together with the copy of the paper publication pursuant to the order passed by this Court. As per the affidavit filed by Mr.Kanayalal J. Darji, no objection is received by the petitioner(s) or their learned advocate in response to the advertisement for opposing the Scheme of Amalgamation or otherwise.

5.In response to the notice issued to the official Liquidator the report has been filed dated 13.4.2007 together with the report of the Chartered Accountants, M/s.Alpa Bhavesh Shah and Co., and in the said reports, the observation appears to have been made that the Transferor Company has not carried out the business activities as per the main objects as given in the Memorandum of Association, but has carried out non-banking activity, without the prior approval of Reserve Bank of India. It is also stated in the said report that as per the

Chartered Accountant, subject to the aforesaid, no material has come on record of the company, which would show that the affairs of the companies have been conducted in the manner prejudicial to its members and the public interest. The OL further in view of the remarks of the Chartered Accountant has opined accordingly.

6. Therefore, it appears that it is on account of the remarks made by the Chartered Accountant in the report that the alleged activities of the Company as that of non-banking without the approval of Reserve Bank of India, OL has reported accordingly. Otherwise the affairs of the company are found as not being conducted in the manner prejudicial to its members and/or public interest.

7. No material is placed on record to show that any proceedings are initiated by RBI or the competent authority under the Banking Regulation Act or other appropriate authority concerning to the alleged non-banking activities of the transferor company. Therefore, it appears that it may not be necessary for this Court to conclude on the said aspects as to whether the activities were conducted in accordance with the main objects of the Company given in the Memorandum of Association or that any approval of the RBI was required or any prohibition for

such purpose. If the proceedings are initiated for such purpose in accordance with law, appropriate authority may take independent view. Therefore, on such aspects the rights and contentions of the concerned authority and/or the Directors of the company as the case may be shall remain open and the order of this Court in the present proceedings shall not be read as concluding the same and/or putting a seal over such alleged activities. The reference may be made to the decision of this Court in the case of **Arvind Mills Ltd.", reported in Vol111 Company Cases, p. 118 and** more particularly the observations made at page 165 and 166 and another decision of this Court in Company Petition No.10 of 2006 in case of **Core Health Limited** and more particularly the observations made at para 32. Hence, subject to the aforesaid observations, as the opinion of the Official Liquidator is that the affairs of the companies are not being conducted in the manner prejudicial to its members or public interest, it appears that the scheme can further be considered for sanction accordingly.

8. In response to the notice issued to the Central Government, Mr.Mr.P.L.Malik, Assistant Registrar of Companies has filed his affidavit raising objection based on the communication received by the Registrar of Companies vide letter dated 28.3.2007 from the Regional Director, Company

Affairs.

9. Concerning to the first objection pertaining the addition of the authorised capital of the Transferor Companies into Transferee Company, and for compliance to the provisions of Section 94 read with Section97 of the Companies Act, it appears that as per the affidavit filed by Kanaiyalal J.Darji, Director and Authorised Signatory of the petitioning company in company petition No.33/07, the declaration is made to give up clause 9(i) of the Scheme whereby the authorised capital of the Transferor Company is proposed to be added to the authorised capital of the Transferee Company and it is further declared that in case the transferee company decides to increase its authorised capital at a future date, it shall comply with the applicable provisions of Section 94/97 read with Schedule (X) of the Companies Act, 1956 in respect of filing of Form 5 with the Registrar of Companies and pay necessary duties/fees in accordance with law. In view of the aforesaid declaration made at para 2 of the said affidavit, the said objection would not survive and the declaration made and recorded hereinabove, shall be abided by the company concerned.

10. Concerning to the second objection raised on behalf of the Central Government for compliance to the provisions of Section 21 of the Companies

Act, since a change in the name is to result into as a consequence of the scheme, if ultimately sanctioned, it appears that the said aspect is also covered by the decision of this Court in the case of Search Chem Industries Ltd. reported at (2006) 129 Comp Case 471(Guj), wherein this Court by relying upon the other decision of the Bombay High Court and also of this Court, observed as under:

> "8. Notice of the petitions has been served upon the Central Government and Ms. P.J.Davawala, Additional Standing Counsel appearing for the Central Government. Ms. Davawala has informed the court and put on record the letter from the Registrar of Companies of Gujarat dated 21.8.2003 along with the letters of the Regional Director dated 3.7.2003 and 13.8.2003 indicating that the Central Government has made three observations. These observations are with regard to the clauses of the scheme pertaining to the change in the name of the companies, Change in the Object Clause of the Transferee Company and the pending prosecution against the De-merged company.
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> 9. I have heard Ms. Swati Saurabh Soparkar, learned advocate for the petitioner companies on these issues. It is submitted by her that the observations pertaining to the clauses of the scheme, it is an accepted position that the scheme under section 391 and 394 is a complete code in itself and considering the principle of "Single Window Clearance" it is not necessary for the petitioner company to get separate clearances prescribed under the Companies Act, 1956, The said submission is substantiated by the decision of the Bombay High Court in the matter of PMP Auto Industries Limited (80 Co.Cases 819) as also in the case of Rangkala Investments Limited (89 Com.Cases 774). With regards to the pending prosecution against the de-merged company, it is submitted that since the De-merged company is going to subsist even after the sanction of the scheme and the Scheme nowhere proposes to affect the same, the pending proceedings may continue in accordance with law.
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> 10. Considering the above submissions and having gone through the petitions, I am satisfied that the observations made by the Central Government are misconceived. As held by this Court in the case of Rangkala Investments Limited (supra) and Manekchowk Mills Limited (supra) as also the Bombay High Court in the case of PMP Auto Ltd.(supra), the Scheme proceedings under

> section 391-394 give "single window clearance" and there is no reason to insist for a separate formality to be followed for change in the name or the Object clause of the Memorandum of Association of the Resulting Company. However, the petitioner companies are directed to file necessary forms as prescribed under law in the office of the Registrar of Companies to place on record these changes. As to the 3rd objections, in view of the fact that the De-merged company continues to subsist, the pending proceedings would obviously continue in accordance with law."

11. Therefore, it appears that in view of the aforesaid position of law, the objections raised on behalf of the Central Government would not come in the way of sanctioning the Scheme of Amalgamation.

12. No other adverse circumstance are brought to the notice of this Court.

13. Hence, subject to the above observation on the concerned aspects, the present Scheme of Amalgamation is sanctioned as per the provisions of the Companies Act, save and except the deletion of the clause 9(i) of the Scheme.

14. Petitions are allowed to the aforesaid extent.

15. The fees of the Central Government Standing Counsel shall be paid by the petitioning Companies which is quantified at Rs.3,500/- for each petition. It will be open to the petitioning Company to pay the cost directly or to the counsel concerned by A/c. Payee cheque.

(JAYANT PATEL, J.)

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